

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**NICOLE L SITES**  
Claimant

**APPEAL NO: 07A-UI-07912-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINT VAN LINES INC**  
Employer

**OC: 07/22/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Lint Van Lines, Inc. (employer) appealed a representative's August 16, 2007 decision (reference 01) that concluded Nicole L. Sites (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 4, 2007. The claimant received the hearing notice and responded by calling the Appeals Section on August 23, 2007. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. Naren Cunningham appeared on the employer's behalf. During the hearing, Employer's Exhibit One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 4, 2007. She worked full time as relocation coordinator at the employer's household goods moving and storage business. Her last day of work was July 24, 2007. The employer discharged her on that date. The stated reason for the discharge was repeated careless errors.

The claimant had been given prior warnings including a written warning on July 19, 2007. That warning specified that additional errors would be grounds of termination. The July 19 warning was given in the morning, and in it the claimant's supervisor instructed the claimant to "pull all of your files this afternoon and review all . . . entries . . . to make sure you have no more of these types of errors." Some of the types of errors which were reviewed dealt with giving away a packing job to another affiliated agent within the employer's territory and in not correctly listing loads that should have been designated as ready and sent to operations.

The claimant's supervisor checked with the claimant a number of times during the afternoon of July 19, and ultimately the claimant informed the supervisor that she had gone back through all of her files and had made any necessary corrections. However, on July 23 the employer discovered that on July 18 the claimant had incorrectly given away another packing job to another affiliated agent within the employer's territory and had failed to catch and correct this on July 19. The employer also discovered on July 23 that the claimant had failed to list as ready an auto transit that should have been moved to ready status at the same time that the claimant had listed as ready a household load for the same customer service representative.

The employer had previously observed that after the claimant's training she had demonstrated an ability to properly perform her duties, but that for the final period of her employment appeared to be overly distracted from attending to her duties.

The claimant established a claim for unemployment insurance benefits effective July 22, 2007. The claimant has received no unemployment insurance benefits since the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

The claimant's failing to catch and correct errors when she was given the opportunity to do so and repeating errors in duties that she had previously demonstrated an ability to perform properly shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 16, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 24, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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